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No. 91-732

Supreme Court, U.S.  
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In The  
**Supreme Court of the United States**  
October Term, 1991

KAREN SNIDER, Acting Secretary of the  
Department of Public Welfare, Commonwealth  
of Pennsylvania, et al.,

*Petitioners,*

v.

TEMPLE UNIVERSITY - OF THE COMMONWEALTH  
SYSTEM OF HIGHER EDUCATION, et al.,

*Respondents.*

**Petition For A Writ Of Certiorari To The  
United States Court Of Appeals For The  
Third Circuit**

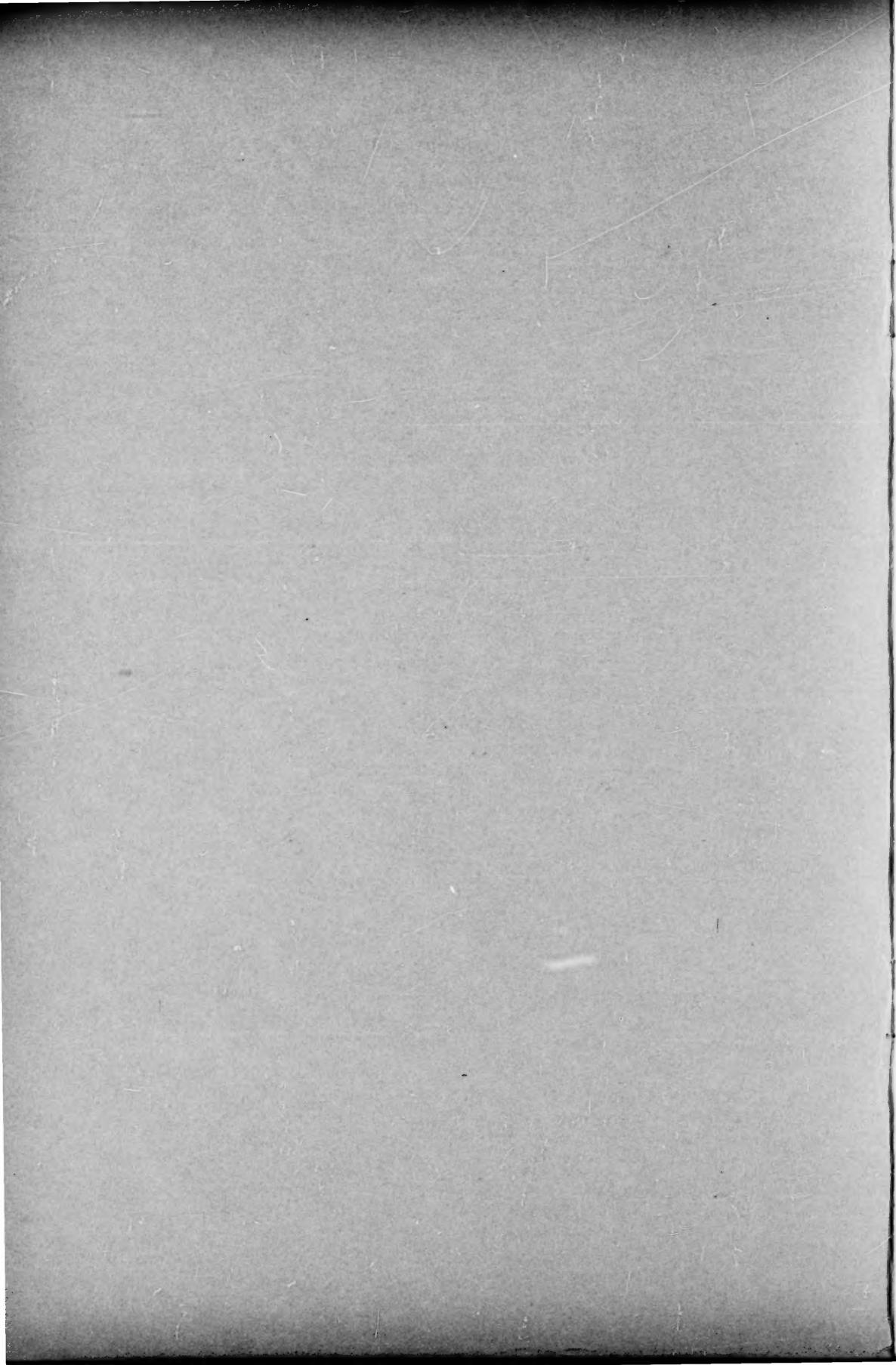
**SUPPLEMENTAL BRIEF IN OPPOSITION OF  
RESPONDENT TEMPLE UNIVERSITY -  
OF THE COMMONWEALTH SYSTEM OF  
HIGHER EDUCATION**

**Of Counsel:**

GEORGE E. MOORE, Esquire  
University Counsel  
Temple University  
435 Carnell Hall  
Broad and Montgomery Avenue  
Philadelphia, PA 19122

\*Counsel of Record

MATTHEW M. STRICKLER\*  
LAURIE MARTIN  
BALLARD SPAHR ANDREWS  
& INGERSOLL  
1735 Market Street  
51st Floor  
Philadelphia, PA 19103-7599  
(215) 665-8500



Respondent Temple University - Of the Commonwealth System of Higher Education<sup>1</sup> files this Supplemental Brief to bring to the attention of the Court the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (the "Amendments"), passed by Congress on the afternoon of November 26, 1991.<sup>2</sup> Counsel understands that the Amendments reflect a compromise among Congressional leaders, the Health Care Financing Administration, and the National Governors' Association and that the Amendments are expected to be signed by the President. Counsel has been unable to determine, however, when the President is expected to sign them. Enactment of the Amendments would make the issues presented in the Petition unworthy of consideration by this Court for the following reasons:

1. The actions that are the subject of this Petition have been conditionally settled and the enactment of the Amendments would make the final dismissal of the actions pursuant to that settlement more likely. Specifically, the Amendments, in section 2(c)(3), would nullify the interim regulations of the Secretary of Health and Human Services promulgated September 12, 1991 (and cited in footnote 1 on page 15 of the Petition)<sup>3</sup> and, in Section 2(a), would permit the parties to engage in a

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<sup>1</sup> Respondents in the Hospital Association of Pennsylvania and Albert Einstein Medical Center actions join in this Supplemental Brief.

<sup>2</sup> The text of the Amendments can be found at page H 11865 of the Congressional Record for November 26, 1991.

<sup>3</sup> The September 12, 1991 regulations were superseded by another set of interim final regulations published October 31, 1991 at 56 Federal Register 56132.

pooling transaction during Pennsylvania's fiscal year ending June 30, 1993. Such a pooling transaction would enable the Petitioners to pay the higher rates required by the Stipulation of Settlement during that fiscal year end, if there is no event which would permit a party to terminate the Stipulation, would require these actions to be dismissed on July 1, 1993, regardless of any action by this Court. After enactment of the Amendments, no obstacle should prevent the dismissal of these actions.

2. The Petition asks this Court to interpret language of the Medicaid Act which has limited effect because it is subject to continuing legislative refinement. The Amendments would continue this process. The Amendments, in Section 3, would further amend 42 U.S.C. § 1396r-4, effective January 1, 1992, to limit total add-on payments by all States to "disproportionate share" hospitals to twelve percent of the total payments by all States, but with numerous exceptions. Section 3 would also nullify the interim regulations on "disproportionate share" hospitals promulgated by the Secretary on October 31, 1991 (and cited at page 8 of Temple's Brief in Opposition). Finally, Section 3 would require the Prospective Payment Assessment Commission to conduct a study and to report to Congress before January 1, 1994, concerning the feasibility and desirability of establishing maximum and minimum payment adjustments for "disproportionate share" hospitals and the criteria appropriate for designating "disproportionate share" hospitals. The Amendments demonstrate that Congress is continuing to define those hospitals that must be treated as "disproportionate share" hospitals and the payments that must be made to those hospitals. This court should not use its limited time to

review decisions by lower courts interpreting statutory language that is subject to continuing Congressional refinement.

3. The Amendments demonstrate that, notwithstanding the continuing Congressional interest in refining the provisions of the Medicaid Act, there is no Congressional interest in nullifying or altering this Court's ruling in *Wilder v. Virginia Hospital Association*, 110 S.Ct. 2510 (1990). The Amendments would be a second instance in which Congress has amended the Medicaid Act without taking the opportunity to nullify or alter that decision.

For these reasons and the reasons stated in its Brief in Opposition, Respondent Temple University - Of the Commonwealth System of Higher Education requests the Court to deny the Petition.

Dated: December 6, 1991

MATTHEW M. STRICKLER  
LAURIE MARTIN

BALLARD SPAHR ANDREWS  
& INCERSOLL  
1735 Market Street  
51st Floor  
Philadelphia, PA 19103-7599  
(215) 665-8500

Of Counsel:

GEORGE E. MOORE, Esquire  
University Counsel  
Temple University  
435 Carnell Hall  
Broad and Montgomery Avenue  
Philadelphia, PA 19122

*Attorneys for Respondent  
Temple University - Of the  
Commonwealth System of  
Higher Education*